HEARTLAND'S BOARD OF LEGISLATIVE ADVISORS - PAGES 20-23

Review: The Case Against Lawyers page 16

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PBot inside

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Potshots

When the shameless compete against the spineless, the shameless always win.

JULIAN BOND

Don't leave the public out of public policy, and don't leave self out of self-government.

STATE SENATOR JOHN ANDREWS (COLORADO)

Consensus: The process of abandoning all beliefs, principles, values, and policies in search of something in which no one believes, but to which no one objects.

MARGARET THATCHER

The critical tactic, understood by America's rebellious colonists, is to refuse government new sources of revenue. Once granted, such taxes will never be voluntarily surrendered by public officials.

DOUG BANDOW

May you live to be a hundred years ... with one extra year to repent.

IRISH TOAST

English language lesson #22: Even if a mixed metaphor sings, it should be derailed.

It is easier to fight for one's principles than to live up to them.

ALFRED ADLER

A State Checklist for Creating High-Risk Pools

Rod Turner FSA, MAAA

The Trade Act legislation passed by the 107th Congress and signed by President Bush on August 6, 2002 provides up to $100 million in federal funding for states to create high-risk pools or fund existing ones. The legislation is a good first step toward offering uninsured people with preexisting conditions access to affordable coverage.

But the states have only two years to acquire these funds, and state legislators as well as the general public are largely unaware of how high-risk pools work, what the legislation provides, and what states must do to implement the programs. This article furnishes basic information and a checklist to help states get started.

HOW DO HIGH-RISK POOLS WORK?

Currently, 30 states have enacted legislation establishing high-risk pools (HRPs) that provide comprehensive health coverage to individuals who cannot otherwise obtain medical insurance due to pre-existing medical conditions. State-based high-risk pools appeared 25 years ago and now cover about 153,000 people.

In most states with HRPs, applicants have a choice among PPOs or indemnity plans offering a range of deductibles and copayments. In other words, applicants can choose what best fits their needs and budget. States with well-functioning high-risk pools have largely solved the problem of access for their medically uninsurable residents.

WHAT DOES THE LEGISLATION PROVIDE?

H.R. 3009 provides federal money for states that did not have a qualified high-risk pool as of August 6, 2002. Up to $1 million per state may be available. Additionally, the law provides some federal funding for the maintenance of HRPs, whether currently existing, newly created, or modified.

HOW DOES A STATE GET STARTED?

The National Association of Insurance Commissioners (NAIC) has created model legislation that establishes the framework for a well-functioning pool. Here are the steps states should follow to get their pool up and running:

1. Obtain model language from the NAIC.
2. Work closely with state insurance department staff and local health insurers to prepare the legislation.
3. Keep changes to the NAIC model to a minimum, since they may alter the plan in ways that undermine it.

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*Telephone survey of state elected officials conducted in May 2002 by Wiegand Victory Enterprises.

News from the Heartland

by Diane Carol Bast
Editor

WELCOME FRIENDS, NEW AND OLD

Welcome to the 2003 legislative session! If you are returning for another term, you probably recognize *Intellectual Ammunition's* distinctive cover and design. If you are new to elected office, welcome to your first issue of *IA*.

Intellectual Ammunition is sent to every state and national elected official in the U.S., plus several thousand civic and community leaders, journalists, and Heartland supporters. *IA* has been informing elected officials and motivating grassroots activists since 1991.

Intellectual Ammunition features the best work of leading policy analysts at the nation's leading think tanks and advocacy groups, including The Heritage Foundation, Mercatus Center, Reason Foundation, and Tax Foundation. Columns address a single issue and fit on a single page, making them easy to clip, copy, and circulate.

Most issues of *IA* also have a feature article on an especially "hot" public policy issue, and an excerpt or executive summary of new research. The last pages of each issue are devoted either to a directory of Heartland's Legislative Advisors (as this issue does) or a directory of think tanks and advocacy groups.

WARNING: BIG ISSUES LIE AHEAD

This year is likely to be the most challenging and exciting year for legislators in a long time. A slow economy and the after-effects of 9-11 are depressing state and federal revenues, while some poor public policy decisions made during the 1990s are coming home to roost.

At The Heartland Institute (publisher of *Intellectual Ammunition*), we are closely tracking four public policy topics:

- **School reform.** The Supreme Court ruled in 2002 that school vouchers are constitutional, opening the floodgates for voucher initiatives in many states. We believe this is great news for parents, teachers, children, *and* taxpayers.
- **Health care finance.** Congress is likely to pass tax credits for the uninsured and a limited prescription drug benefit, both actions approved by the Bush administration. This is great news for patients, doctors, and hard-pressed state treasuries.
- **Common-sense environmentalism.** Being "pro-environment" is no longer enough to win public support. We've now seen two election cycles where opposition to radical environmentalism played very well to key groups of voters. Sound science and market-based methods, not scare tactics and bigger government, are winning messages.
- **Taxes and spending.** Record-setting projected budget deficits mean elected officials have to choose between higher taxes or spending cuts. We hope they choose the latter. Taxpayers need tax relief now more than ever. Governments need to tighten belts that got awfully loose during the 1990s.

HELP US HELP YOU!

Although we've tried to secure the best available information for updating the *Intellectual Ammunition* mailing list with last November's election results, we've almost certainly fallen short. Only you can help!

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APPOINTING A BOARD OF DIRECTORS

A competent, dedicated and knowledgeable board of directors is essential. The board can make or break (or at least damage) the HRP.

- Determine early who will be on the board and get them involved in the process.
- Make sure board members know up front that they will be responsible for all of the hard work of developing the pool program in a timely fashion.
- Establish the board as a voluntary body reimbursed only for expenses.
- If the board has been appointed prior to passage of legislation, involve board members in the legislative development of the HRP.
- Require that the board hire all contractors and that contractors have a history of high integrity and quality service.
- Set up a lengthy initial board meeting, perhaps one lasting several days, to familiarize members with their duties and resolve key issues.
- Make the commissioner of insurance or a representative an ex-officio member of the board, charged with providing ongoing assistance at the meetings.

It is critical that the board membership, although not necessarily each person, be knowledgeable about both group and individual insurance issues. Without a strong and savvy board, getting a pool up and running quickly is very difficult.

LEGAL EXPERTISE

Even board members with considerable expertise in insurance and actuarial matters are unlikely to have the requisite legal skills.

- Legal counsel will need to develop the Plan of Operation for the program; some of the states with successful HRPs will readily share their plans.
- Legal counsel also will need to develop contracts with entities the board hires; again, other states have current versions available as models.
- Since the board is ultimately responsible for plan compliance with federal regulations, counsel will need to be familiar with the federal Health Insurance Portability and Accountability Act (HIPAA) and with Gramm, Leach, Bliley (GLB) privacy requirements, even if the administrator is an expert on them.

WHO'S ON TOP?

An executive director (ED) is invaluable in the startup of a program. The ED should understand health insurance and have good political instincts, since he or she will be dealing with state officials, their aides, and, to some degree, the public.

- The ED handles all the day-to-day issues that result from board decisions. Unless someone moves the issues forward, the board's wishes cannot be carried out.
- When the board is considering entering into a contract, the ED researches the contracting party and arranges formal due diligence as needed.
- The ED also is responsible for interacting with consumers, legislators, and regulatory bodies.
- Finally, the ED is responsible for updating advertising and/or marketing materials unless the administrator is specifically charged with this task.

WHO'S NEXT TO THE TOP?

The administrator works under the ED and is responsible for the day-to-day activities of the plan. An experienced person is critical to achieving a fast startup.

- The administrator handles premium collection, claims payments, the application and issue process, commission processing, customer service, and all other associated functions.
- The administrator may also engage in compliance activities, advertising, and the development of marketing material.
- The administrator may develop the Web site for the program.
- Working with the sales distribution channels in the state is very important for the administrator, who should be allowed to license agents and manage reporting functions as well as distribute sales materials.
- The administrator creates relationships with PPOs and/or other discount networks in order to keep program costs as low as possible.
- The administrator develops relationships with centers of excellence that can provide the types of care the high-risk population often requires.
- The administrator identifies a pharmaceutical benefit manager to assure cost-effective administration of outpatient pharmaceuticals.
- In most states, grievance procedure handling is necessary, and that job too usually falls to the administrator.

NUMBERS YOU CAN COUNT ON

Risk pools lose money because they accept people with preexisting medical conditions who cost more in care than they pay in premiums. It is crucial that the pool leadership contract with actuarial support to establish the right premiums for the program and to perform other required actuarial functions.

- The actuaries project individual participation and work with the accountants and the board to establish proper funding levels and assessments adequate to cover losses.
- The actuaries compare benefits and assist with initial benefit development for HIPAA compliance purposes.
- The actuaries also compare rates and benefits to those of other state HRPs and to the individual health insurance markets of their own and other states.
- The actuaries calculate reserves to assure the accuracy of financial analysis and reporting.

THE ROLE OF ACCOUNTING AND AUDITING

The level of accounting assistance needed depends upon the services the ED and administrator are able to provide.

- The board must have accurate, detailed, and frequent financial reports in order to assure good program management.
- Board members, the state insurance department, and the insured must receive annual reports.
- Certified public accountants and auditors must verify all reports.
- An outside auditing firm should perform annual audits of all contracted parties.

CONCLUSION

A state seeking to establish a program in the minimum amount of time should follow as much as possible the previous work of other HRPs. The National Association of State Comprehensive Health Insurance Plans (NASCHIP) (phone 952/851-7245), which is the trade association for risk pools, will provide the necessary information, including contact information for existing HRPs. Communicating for Agriculture (phone 800/432-3276), which regularly publishes the book detailing all existing HRPs, and the Council for Affordable Health Insurance (phone 703/836-6200) are other reliable resources.

Rod Turner FSA, MAAA is vice president of American Republic Insurance Company and a board member of the New Hampshire and Iowa high-risk pools. This essay, first published by the Council for Affordable Health Insurance, is reprinted here with permission. For additional information, contact Tom Gardner, CAHI director of communications, at 703/836-6200 or by email at **tgardner@cahi.org**, *or visit CAHI's Web site at* **http://www.cahi.org.**

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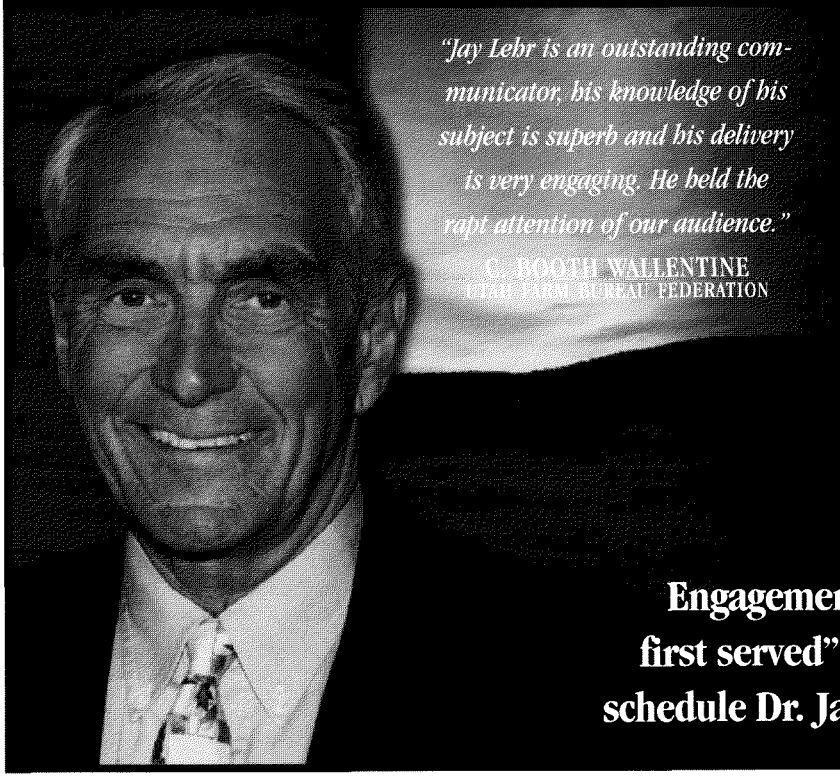

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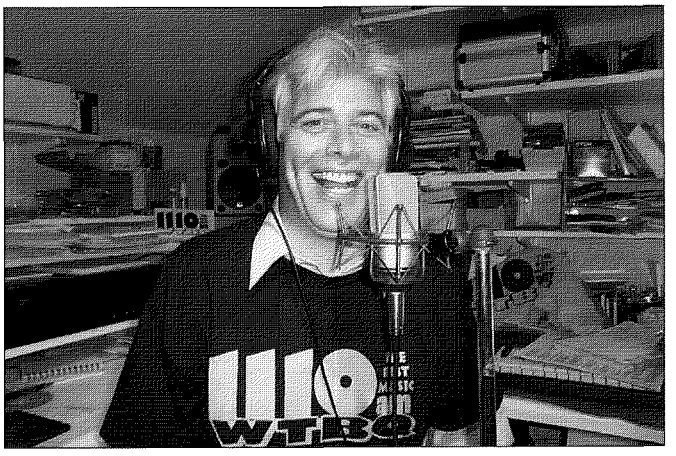

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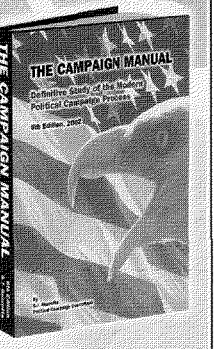

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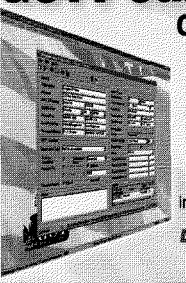

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Education

Many Benefits to Smaller Schools

George Clowes

George A. Clowes is managing editor of *School Reform News*, a monthly publication of The Heartland Institute.
http://www.heartland.org

Having fewer students per school is one of only three inputs found to have a positive impact on educational achievement, according to a statistical analysis reported in the latest issue of the American Legislative Exchange Council's *Report Card on American Education*. The ALEC study, published last October, is the latest in a series of reports on the benefits of smaller schools that are encouraging state policymakers to take a closer look at school size.

During the past half century, the average school size has increased from just over 100 students to well over 600, with many high schools now enrolling more than 1,000 students. School size is continuing to increase ... but that growth is not being driven by research showing benefits to having larger schools, according to a study published last September by KnowledgeWorks Foundation, called *Dollars and Sense: The Cost-Effectiveness of Small Schools*.

During the past half century, the average school size has increased from just over 100 students to well over 600, with many high schools now enrolling more than 1,000 students.

What drives the creation of larger schools, the report suggests, are the following state policies:

- minimum enrollment qualifications for state funding of school facilities;
- excessive acreage requirements, which tend to push officials to consolidate smaller schools;
- policies that discourage renovation and maintenance of older schools by triggering new construction when renovation costs exceed a certain level.

State policy is sometimes contradictory. For example, while North Carolina's facilities planning guidelines recommend a minimum school size of 450 students, the same publication lists smaller school sizes for improved safety and violence reduction: elementary, 300-400; middle, 300-600; and high school, 400-800.

The KnowledgeWorks report suggests developing smaller schools is a wise investment when the cost per graduate is taken into account. The report identifies educational and social benefits of small schools and contrasts these with the negative effects large schools have on students, teachers, and members of the community.

"Many decision-makers ... are reluctant to embrace small schools for fear that they are not economical and place an unnecessarily heavy burden on taxpayers," note the report's authors. However, "there are many economic arguments in support of small schools and ... it is fiscally responsible to spend school construction dollars on small school facilities."

LESS VIOLENCE, MORE PARTICIPATION, HIGHER GRADES

Studies have shown small schools can operate more flexibly and more responsively than large schools because there is less formal bureaucracy. In addition, students and teachers in small schools know each other better, there are higher levels of teacher satisfaction, and community members are more involved with the schools.

"There is less violence in small schools, less vandalism, a heightened sense of belonging, and better attendance," the KnowledgeWorks report states. "Students earn higher grade point averages, and more participate in extracurricular activities."

One of the most important characteristics of small schools is that their dropout rates tend to be lower than those for large schools. Besides having a profound effect on the lives of the students, this lower dropout rate has a profound effect on the cost-effectiveness of small versus large schools. While cost per student was higher at smaller high schools, researchers at New York University's Institute for Education and Social Policy showed that the cost per graduate at the smaller schools was slightly lower than the per-graduate cost at larger schools.

Other researchers also have reported higher graduation rates in smaller schools, including those serving poor students, and higher percentages of graduates going on to post-secondary education.

"Large schools are expensive to individuals, their communities, and the nation because there are many hidden costs," the report concludes. It urges communities and policymakers to "treasure their small schools" and protect them with sound policies and financial support.

GRADE SPANS

The *Dollars and Sense* report also points out that a 500-student school with grades K-8 is not the same "size" as a school with 500 students in grades 3-4. The first is a "small" school with 56 students per grade; the second is a "large" school with 250 students per grade.

"Including a *wider* rather than *narrower* grade span configuration is a better way to reap the advantages of small schools," argue the report's authors, noting research has identified "social and academic liabilities" to having narrow grade spans.

FOR MORE INFORMATION...

Dollars and Sense: The Cost-Effectiveness of Small Schools. Even though people recognize and appreciate the benefits of small schools, too many of them think the cost of such schools is prohibitive. (KnowledgeWorks Foundation, September 2002, 44pp).

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Environment

Andrew P. Morriss and Bruce Yandle

Andrew P. Morriss and Bruce Yandle are senior associates of PERC—the Center for Free Market Environmentalism in Bozeman, Montana.
http://www.perc.org

An Ominous New Era: Regulation by Litigation

FOR MORE INFORMATION...

This article can be accessed on the Web at **http//www.techcentralstation.com/1051/envirowrapper.jsp?PID=1051-450&CID=1051-101702C**.

Regulation by Litigation: The Diesel Engine Episode. By understanding the facts surrounding regulation of diesel engines and the insights offered by theories of regulation, we may be able to explain this new episode in regulatory history. (PERC, 2002, 28pp.)

PBot® Go to www.heartland.org and use PolicyBot to search for document **#11387**.

Regulating industries is a slow and cumbersome process, frustrating for officials because it often fails to achieve the results they want. So the Environmental Protection Agency has come up with a new strategy, one that turns the Constitution on its head and gives unelected regulators the power of the sovereign. It's called regulation-by-litigation, and a lot of industries had better watch out.

Despite their awesome powers, EPA regulators typically operate under legal constraints. Congress requires that new rules be published in the *Federal Register* when they are proposed, and all interested parties must have a chance to comment. Congress itself has the power to block agency rules.

Chafing under those controls, EPA has found a weapon even more powerful than rules: litigation. In recent years, the agency has sued and settled with firms in wood products, chemicals, petroleum refining, pulp and paper, electricity generation, and the diesel engine manufacturing industries.

Companies targeted by EPA have a strong incentive to settle because the agency often has life-or-death power over other aspects of their businesses. The President or any member of Congress are unlikely to meddle with the courts once federal attorneys have a case underway.

TAKING ON DIESEL ENGINES

EPA's 1998 lawsuit against heavy-duty diesel engine manufacturers illustrates regulation-by-litigation at its blitzkrieg worst. The agency alleged it had just discovered the engine manufacturers had been evading clean air rules. According to EPA, the companies used the engines' electronic controllers (necessary to make the engines function) to minimize pollution only during the urban operating conditions under which EPA tested the engines. On the open highway, EPA claimed, the engines maximized fuel mileage, rather than minimizing emissions. As then-EPA Administrator Carol Browner put it, the manufacturers "programmed the engine so that it knew when it was being tested and when it was on the road."

But as a House Commerce Committee investigation later uncovered, EPA had known about—and approved—this use of the controllers for decades. Nonetheless, the engine makers were in a weak position. To sell new engines, the firms must have EPA's approval every year. A Mack Truck Company vice president said EPA "held a gun to our head by threatening to withhold certification for 1999."

The agency got what it wanted: a high-profile victory. The firms agreed to new regulatory controls—possibly including some the agency was barred from imposing through traditional regulation. The engine manufacturers also paid about $1 billion in fines and settlement-specified environmental activities. Said then-Attorney General Janet Reno, "Every polluter in America had better take note of these record penalties—if you pollute America's air, you are going to pay a very high price."

ILLEGAL DEMANDS

What could be wrong with forcing the development of cleaner truck engines?

First, Congress had explicitly forbidden EPA to change the rules governing emissions on the schedule the settlement imposed. EPA litigation sidestepped the four-year stability period required after each regulatory change.

Second, the suit denied opportunities for other affected industries to bring their concerns to the table. The Truck Manufacturers Association, which is the largest buyer of diesel engines, sought to enter the action but was turned down.

> *EPA and other regulatory agencies have enormous authority over the economic survival of most American firms today.*

Third, the settlement led to an entirely predictable reaction by truck buyers. Anxious to avoid the more expensive and potentially less reliable new engines, they engaged in a massive "pre-buy" of trucks before the settlement rules take effect. So, even if the new truck engines are cleaner as EPA claims, tens of thousands of extra older, dirtier engines are on the highway today—solely because of EPA's action. With these trucks on the road for 10 years or more, any net benefit from the new standards will be postponed for years.

Fourth, the engine and truck manufacturing industries have been disrupted by wild swings in production induced by EPA's actions. Many truck manufacturers operating at full capacity before the deadline are now laying off workers and closing plants as engine orders decline precipitously.

EPA and other regulatory agencies have enormous authority over the economic survival of most American firms today. With so much at stake, many firms cannot withstand the demands of regulators, even when those demands would be illegal under traditional regulation. State legislators should refuse to allow their regulators and state attorneys general to follow this path, and President Bush and Congress should rule regulation-by-litigation out-of-bounds.

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Health Care

Twila Brase

Public health nurse Twila Brase is president of Citizens' Council on Health Care.
http://www.cchconline.org

Medical Records Are the *Patient's* Property

Minnesota health officials have obtained a property right to individually identifiable medical data. An administrative law judge ruled the health department has the authority to build a state health care database. No patient consent is required.

Judge Allan Klein determined, "The Department has shown that there are significant benefits in reducing costs to the public, improving treatment for patients, informing consumer choice in medical care, and preventing inadvertent harm when receiving medical care. Each of these reasons is a sufficient justification for establishing a database populated with billing data created for payment of medical services, so long as patient privacy can be protected."

The rule is enabled by a 10-year-old health care reform law, enacted when Minnesota legislators hoped the North Star State would be the first to implement HillaryCare.

PUBLIC OPPOSITION

As a result of front page news coverage, Minnesotans responded with a flood of opposition. During the public comment period required before the rule could go into effect, 1,086 letters were sent; 94 percent of them opposed the rule. The judge acknowledged the strong opposition, noting, "There is no system of reasonable safeguards that will satisfy both the needs of the researchers and the concerns of all of the public. The legislature has struck it's [sic] balance, and the Department has designed a system that is consistent with the legislative balance."

Perhaps, but the 1993 legislature made a bad decision. Providing government with property rights to the medical data of law-abiding citizens, and then promising to protect privacy, does not

Individual control of medical record disclosure is as much about property rights as about privacy rights

stand up to public scrutiny or constitutional muster. The public understands patient privacy does not begin in government cubicles. And the Fourth Amendment protects against unwarranted government access to papers, persons, and effects.

At stake is the dignity of humanity and the integrity of a free society. If research is valued more highly than individual rights, people become mere means to an end. Such utilitarianism is neither democratic nor moral. Moreover, the very action of balancing civil and patient rights against government-generated priorities undermines the founding principles of the United States.

EXPLOITATION OF PATIENTS

Giving government officials a property right to patient information also makes exploitation of patients possible. John Moore's story is a classic example.

In 1976, shortly after he learned he had hairy-cell leukemia, Moore visited the UCLA Medical Center. Blood, bone marrow, and other bodily substances were extracted for examination. Dr. David W. Golde, his attending physician, and a UCLA researcher, Shirley G. Quan, recognized commercial and research value in certain blood products. Golde recommended to Moore that his spleen be removed, and Moore signed a consent form for the procedure.

If research is valued more highly than individual rights, people become mere means to an end.

Prior to the surgery, Golde and Quan made their own agreement to obtain and transfer portions of Moore's spleen for research. They did not tell Moore of their plan.

For seven years after the splenectomy, Golde insisted Moore return to UCLA from his home in Seattle for further extractions of body tissue. By August 1979, Golde had established a cell line from Moore's white blood cells. And on March 20, 1984 the Regents of UCLA were granted patent number 4,438,032.

Eventually UCLA entered into commercial agreements with Genetics Institute and Sandoz, a Swiss pharmaceutical company, for development of a cell line now worth more than $3 billion. Golde netted $15 million. When Moore discovered he was being "harvested," he sued, claiming violation of privacy and property rights.

The California Supreme Court agreed with Moore that Golde's actions represented a breach of the physician's obligation to disclose his conflict of interest and the purpose for ongoing extraction of body parts. But the court denied Moore any ownership to his tissues or profit from them, saying, "The theory of liability that Moore urges us to endorse threatens to destroy the economic incentive to conduct important medical research." In a dissenting opinion, Justice Stanley Mosk argued, "the patient has a legally protected property interest in his own body and its products."

Individual control of medical record disclosure is as much about *property* rights as it is about privacy rights. The right to maintain a private self, enforced through privacy and property rights, must always be protected and acknowledged as foundational in a country that professes to be free.

FOR MORE INFORMATION...

State Collection of Private Medical Information: Public Response to Minnesota's Proposed Rule. Details the public's response to the proposed Minnesota rule as provided in public testimony or written in public comments and letters to the Minnesota Department of Health and Judge Klein. (Citizens' Council on Health Care, November 2002, 28pp.)

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Law

Clark Neily

Clark Neily is a senior attorney with the Washington, DC-based Institute for Justice, which is defending the Mackinac Center for Public Policy.
http://www.ij.org

MEA Shouldn't Squelch Speech

When someone calls a press conference, he or she expects—even hopes—to be quoted.

But apparently that's not true of Luigi Battaglieri, president of the Michigan Education Association (MEA).

On September 27, 2001, Battaglieri held a press conference to announce the opening of a new organization called the Great Lakes Center for Education Research and Practice. A key objective of the MEA-funded, MEA-governed group is to defend the educational status quo by criticizing the work of reform-minded organizations such as the Mackinac Center for Public Policy.

In laying out his vision for the Great Lakes Center, Battaglieri candidly acknowledged the prominent role played by the Mackinac Center in providing education research to the public:

"I know what's going through your minds—I think I've worked with the media enough that I expect the headline is going to be that the MEA takes on the Mackinac Center. ...

> *The MEA's willingness to run roughshod over the First Amendment to silence its opponents signals an alarming escalation in the union's battle against meaningful education reform in Michigan.*

"I guess I expect their reaction to be one where they will welcome us as new kids on the block to enter into the field that they've been into for a number of years now, and I assume they're going to scrutinize our research just as much as we've scrutinized theirs. And so, ***quite frankly, I admire what they have done*** *over the last couple of years entering into the field as they have and being pretty much the sole provider of research to the community, to the public, to our members, to legislators, and so on. ...*

"[T]hose of us in the educational community, for being in the business of educating, we've done a poor job in my opinion in the past of educating the public about all the good things that are going on in public education."

Flattered that a long-standing opponent went out of his way to recognize the effectiveness of its work, the Mackinac Center included the union boss's quote in a fundraising letter. The MEA responded with a letter of its own ... from its lawyer.

Using a tactic employed by anti-reformers against the civil rights movement in the 1950s, the lawyer demanded a list of everyone to whom the Center had ever sent a solicitation that referred to Battaglieri or the MEA by name. When the Mackinac Center refused, Battaglieri and the MEA filed suit, accusing the Center of "misappropriating" their "likenesses" for its own commercial benefit and seeking a permanent gag order preventing the Mackinac Center from using their names in any future solicitation. The MEA got the list, but not without a stern statement from the judge warning it against using the list for purposes of intimidation.

FREE SPEECH AT STAKE

Some have looked upon this conflict with a "pox on both their houses" attitude, thinking the Mackinac Center was trying to be too cute by quoting Battaglieri, but that Battaglieri maybe had it coming for making the statement in the first place. But if those individuals care about free expression, they should think again.

If Battaglieri and the MEA are successful in their bullying tactics, speech and freedom of association will be squelched. Imagine a world in which people no longer debate public policy issues for fear of being sued by their opponents.

That is the goal of the MEA's lawsuit.

The MEA's willingness to run roughshod over the First Amendment to silence its opponents signals an alarming escalation in the union's battle against meaningful education reform in Michigan. The Mackinac Center had the same right to publish Battaglieri's remarks as did any reporter who attended the press conference.

Perhaps it is not surprising the leaders of the Michigan Education Association have shown such little regard for the First Amendment. After all, unlike the Mackinac Center, the MEA depends on force, not persuasion, for its financial support: Public school employees in Michigan don't have a choice but to pay their dues. Indeed, by insisting on so-called "compulsory support" clauses in all contracts, the MEA guarantees that public school employees will give money to the union, whether they support it or not. By contrast, the Mackinac Center gets its money from purely voluntary contributions.

Battaglieri said during his press conference that he and his MEA colleagues had done a "poor job" of educating the public about "all the good things" that are going on in public education. If the MEA's heedless assault on the First Amendment is one of those things, maybe it's just as well.

FOR MORE INFORMATION...

The Michigan Education Association Tries to Take the "Free" Out of "Free Speech." A major goal of teacher unions is to control the terms of the public debate over school choice. One way to do that is to pump huge amounts of money into lobbying, issue advocacy and other political activities, which they do. Another way is to smear anyone who challenges the unions and embarrasses them in public. And now the Michigan Education Association is trying still another way to win the school choice debate through force rather than persuasion; it seeks to silence its opponents by dragging them into court when it doesn't like what they have to say. (Institute for Justice, 2002, 14pp.)

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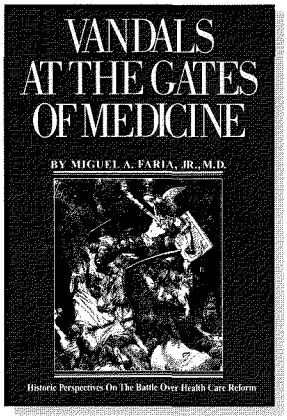
The Classics are Still Available



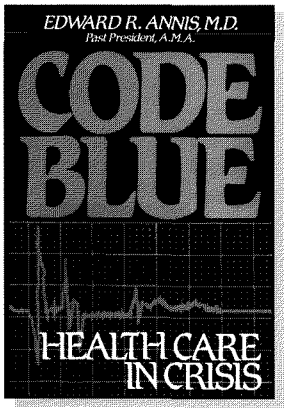
Vandals At The Gates of Medicine

Historic Perspectives on The Battle Over Health Care Reform

Miguel A. Faria, Jr., M.D.

Miguel A. Faria, Jr., M.D. provides compelling arguments that answers to the dilemma of health care reform reside on the pages of history. This fascinating book draws parallels between the past and the present, from a time when the fine line separating myth and history was blurred and indistinguishable to the clearly troubled present.

(403 pp., 1995, Illustrations, Bibliography, Index, ISBN: 0-9641077-0-8, $41.95)



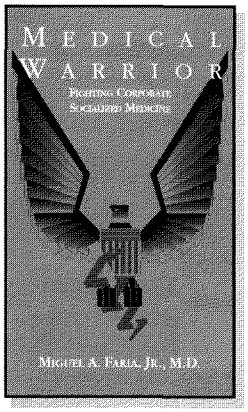
Code Blue

Health Care In Crisis

Edward R. Annis, M.D.

What the press doesn't tell the public—but Dr. Annis does—is that health care problems have a "Made in Washington" label. *Code Blue* shows how with "minimal changes in our tax laws, Medisave accounts would empower the patient by breaking the tie between job and health insurance and even would allow the gradual phasing out of Medicare."

(278 pp., 1993, Index, ISBN: 0-89526-515-X, $21.95)



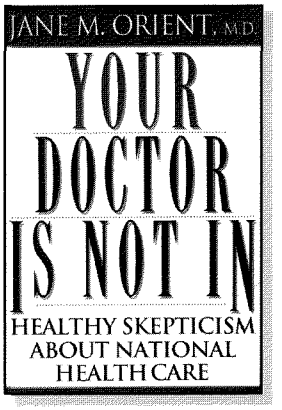
Medical Warrior

Fighting Corporate Socialized Medicine

Miguel A. Faria, Jr., M.D.

In this book of essays, Dr. Faria, argues that managed care and HMOs are not "free market" alternatives, but rather an unholy partnership of government and corporate interests seeking monopolistic government protection to eliminate competition while changing the ethics of medicine from a Hippocratic ethic to a false corporate morality. *Medical Warrior* offers workable solutions to restore medicine to its rightful place.

(207 pp., 1997, Selected Bibliography, Index, ISBN: 0-9641077-2-4, $23.95)

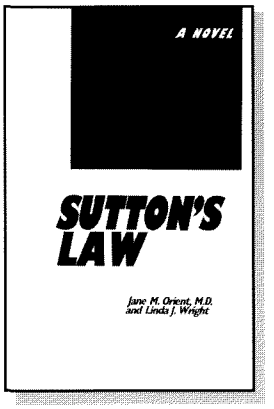


Your Doctor Is Not In

Jane M. Orient, M.D.

In this provocative book, a brilliant, committed physician, a leader in medicine argues for solutions to the crisis in medicine that are bold, thoughtful, and fundamentally opposed to those being widely touted today—including "managed care" systems. From her perspective, there is already too much government involvement in medicine, too much regulation, too much insurance—which is actually prepayment in disguise. These are the root causes of the accelerating rise in fees and costs, the neglect of patients, and stagnation in the science of medicine itself. This book is certain to add fresh energy to the debate over the quality and availability of medical care in America.

(276 pp., 1994, Index, ISBN: 0-517-59011-5, $23.00)



Sutton's Law

Jane M. Orient, M.D. and Linda J. Wright

Sutton's Law is a "frightening realistic novel about where managed care might very well lead us...A mix of medicine, mystery, murder, and intrigue with a little high finance, drugs, and romance—*Sutton's Law* ultimately is about greed and simple justice."

(299 pp., 1997, ISBN: 0-9641077-1-6, $21.95)

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Privatization

Lynne Kiesling

Lynne Kiesling is director of economic policy at Reason Foundation and senior lecturer of Economics at Northwestern University.
http://www.rppi.org

Airport Privatization in the U.S.

With all of the furor in the recent past over airport security, one fact has gotten lost in the shuffle: All 10 of the busiest airports in the U.S. are owned and operated by municipalities.

Public ownership and operation of airports is often taken for granted, but that doesn't mean it's best. Public ownership and operation—which brings a political dimension to hiring and operations—may result in increased operating costs and other inefficiencies.

Amid accusations of graft and patronage, and facing a dire cash flow shortfall, the city of Atlanta is being forced to consider privatization of Hartsfield International Airport. A March 4, 2002 article in the Atlanta *Journal-Constitution* analyzed in great detail the extent of political involvement in every contract for every service at Hartsfield: "In at least 80 of the 100 contracts reviewed, one or more partners had a relationship with one or both former mayors or were political contributors." Hartsfield's general manager reports directly to the mayor ... but former general manager Angela Gittens could not even gain access to city budget and personnel information pertinent to Hartsfield's operations.

The Fulton County Taxpayers Association and many residents of Atlanta and the southeast recognize that private management of Hartsfield International Airport offers great potential for such value creation.

Such a politicized governance process can introduce substantial operating costs that would be saved by hiring a private airport operator and requiring them to adhere to transparent contracts. And the city of Atlanta desperately needs the money.

STAVING OFF BANKRUPTCY?

Atlanta is under a court mandate to upgrade its sewer system, but a recent Bain & Company study indicated the city does not have the future cash flow to do so—unless it cuts spending, raises taxes, or finds some other means of raising revenue. Some observers believe the city could be on the verge of bankruptcy.

Spurred by an initiative from the Fulton County Taxpayers Association, the city is considering a proposal for using the federal Airport Privatization Program (under H.R. 3539) to contract with a private airport operator to run Hartsfield and apply the lease proceeds to city projects other than the airport. The Hartsfield proposal falls short of full privatization, in which the city would sell the airport to a private owner. Instead, the city would retain ownership of the airport and lease it to a private operator, which would make lease payments to Atlanta.

Since the privatization initiative coalesced in August 2002, city officials have moved only slowly toward acceptance of the proposal. Atlanta's CFO, Rick Anderson, worries that once operating costs and debt service payments are accounted for, there may not be sufficient expected profit to attract a private airport operator. He says he does not "see a bunch of money there waiting for somebody to come along and pluck it out."

BRITISH EXAMPLE

Anderson's comments overlook the usual source of value in privatization: increases in productivity and operating efficiency, which translate into reduced operating costs for both the airport operator and the airlines. Such productivity and cost effects have been at the core of the business model for BAA, the private British airport operating company.

In addition to operating seven airports in the U.K., BAA operates several international airports. Its management of the airport in Sydney, Australia has been an unequivocal success, with improved efficiency, reduced costs, and increased employee and customer satisfaction.

In the U.S., BAA manages Indianapolis International Airport. On December 8, 2002, Steve Steckler of Infrastructure Management Group told the Atlanta *Journal-Constitution* BAA increased the airport's profitability "not by raising charges to the airlines, but by increasing food, beverage, and retail sales and increasing cargo. They were able to reduce the cost to the airlines while making the airport a stronger economic engine for the community."

The Fulton County Taxpayers Association and many residents of Atlanta and the southeast recognize that private management of Hartsfield offers great potential for such value creation. An effort is underway to collect enough signatures to put the privatization proposal to a public referendum. If voters agree, and Delta Airlines comes out in favor of the proposal, even an intransigent city government may have to give up its control over Hartsfield's contracts in the interest of maintaining the city's solvency.

Now if we could only persuade them to consider charging peak-hour prices for landing slots ... but let's not push things. Private airport operation is a good start toward increased efficiency and improved resource use in air travel.

FOR MORE INFORMATION...

The Public Benefits of Privatizing Logan Airport. The Reason Foundation has been analyzing the benefits of airport privatization for more than a decade. This classic Policy Study assesses the legal and financial feasibility of selling Boston's municipal airport and offers a projected five-year income and expense statement. (Reason Foundation, 1991, 47pp.)

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Regulation

Does FDA Regulation Violate the Constitution?

Susan E. Dudley

Susan E. Dudley is a senior research fellow and deputy director of the Regulatory Studies Program at the Mercatus Center at George Mason University.
http://www.mercatus.org

From the orange juice we drink to begin our day, to the lunch we eat at a restaurant, to the wine we consume in the evening, the federal Food and Drug Administration regulates what nutritional and health information food and drug manufacturers can share with us.

When Ocean Spray's Web site recently provided information and links to health research regarding juice consumption, the FDA threatened to seize the company's inventory, because the agency had not approved the "health claims."

Restaurateurs cannot make health claims about menu items unless the FDA has approved them. The agency defines such terms as free, low, reduced, light/lite, provides/contains/good source of, high/excellent source of, rich in, lean/extra-lean, fresh, natural, or healthy, and a restaurant must have documentation available for FDA inspections if its menu uses these words.

While a bottle of red wine bears FDA-required labels warning it contains sulfites and may cause health problems, the FDA prohibits vintners from mentioning on the label (or in advertising) that moderate wine consumption may reduce the risk of heart disease.

MISSION CREEP

The FDA's origins date back to 1906, when Upton Sinclair's novel, *The Jungle*, which described the filthy conditions of Chicago stockyards, shocked Congress into passing the *Pure Food and Drugs Act*. Initially, the law focused on ensuring that foods and drugs were what they claimed to be, thereby protecting consumers from false and fraudulent advertising and labels.

Over the years, however, the laws and regulations evolved to restrict statements that might mislead consumers (even if true), to require on labels information deemed important by the FDA, and to prohibit the release of health-related information without prior approval of the FDA. In 2000, the agency was criticized for a proposed requirement that would have intentionally misled consumers as to the identity of trans-fatty acids in foods (proposing to label them incorrectly as saturated fats) because it appeared to be an expedient way to convey that *trans* fats are "bad fats."

BETTER TIMES AHEAD?

Recent events in the courtroom and Executive Branch, however, might signal a movement away from paternalistic efforts to control information flow, toward an approach that encourages the dissemination of information and respects the ability of consumers, doctors, and patients to make wise decisions.

In several cases over the past few years, courts have found that the FDA's regulations regarding advertising and labeling violate the First Amendment provision that "*Congress shall make no law ... abridging the freedom of speech.*" In response to these rulings, the FDA issued a notice in May 2002 requesting public comment on whether its regulations restrict speech and seeking proposals for ways the FDA could protect consumers' interests without violating the First Amendment.

With a new Commissioner finally in place (M.D. and Ph.D. economist Mark McClellan was sworn in on November 14, 2002), the FDA may be on the verge of recognizing that consumers' interests are best served not by restricting the information to which they have access, but by allowing the free flow of truthful information.

Studies suggest the FDA's long practice of not allowing food producers to advertise the health benefits of their products has kept valuable information from consumers.

The FDA may be on the verge of recognizing that consumers' interests are best served not by restricting the information to which they have access, but by allowing the free flow of truthful information.

An empirical examination of the impact of allowing health claims in advertising, conducted by economists at the Federal Trade Commission, found consumers are not only capable of processing health information from advertisements, but are more likely to gain useful information from advertisements than from medical research and raw product data. The research also showed individuals are not likely to be deceived into consuming something that is, on net, relatively harmful when presented with advertisements that selectively impart health information.

The stage is set for the FDA to make its policies more consistent with the First Amendment and more responsive to consumers' needs. As suggested by the Supreme Court in a recent decision regarding pharmaceutical advertising, the FDA should embrace more speech not less, by permitting full disclosure from producers as to the effects of their products, be they pharmaceuticals, nutritional supplements, or foods.

By permitting the free flow of information, the FDA will provide a valuable service. It will be empowering those most affected, consumers and patients, to make an informed decision about their needs.

FOR MORE INFORMATION...

Public Interest Comment on the Food and Drug Administration and First Amendment Issues. Offers a brief overview of case law, followed by a discussion of how advertising and labeling practices affect the consumer and a look at the FDA's handling of the trans fat labeling regulation, concluding with recommendations for how the FDA should approach consumer protection in the 21st century. (Mercatus Center at George Mason University, September 13, 2002, 10pp.)

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Taxes

John Barry

John Barry is chief economist for the Tax Foundation.
http://www.taxfoundation.org

Speeding Up the Tax Cut

Most of the changes included in the so-called Bush tax cut, signed into law on June 7, 2001, have not yet taken effect. Some will kick in during 2004, and some not until 2010. As a result of this "back-loading," 59 percent of the tax relief ($802 billion) will not reach taxpayers until the five-year period from 2006 to 2010.

Now that an increasing number of policymakers feel the economy would benefit from more tax cuts, a debate is brewing over what form they should take. One obvious contender is a proposal to accelerate to 2003 the effective date of tax cuts already signed into law. A possible corollary to that proposal would make the tax cuts permanent instead of allowing them all to expire at the end of 2010.

In 2002, the Republican House passed several bills to make parts of the tax cut permanent, but Senate Majority Leader Tom Daschle never permitted consideration of them, stating, "We will ... never bring up the permanent tax cut the President has advocated."

Though now in the minority, Daschle is still in a position to block permanence because of Senate rules. However, prospects for accelerating the already-passed provisions may be better. One such proposal would:

- Immediately drop each of the top four individual income tax rates to the levels currently scheduled to be in place in 2010.
- Immediately increase the child tax credit to $1,000 per child, the level scheduled to be in effect in 2010.
- Immediately expand the 15 percent tax bracket for married couples filing jointly to twice the size of the 15 percent bracket for single filers, and immediately increase the size of the standard deduction for married couples filing jointly to exactly double that available for single filers. These two provisions would eliminate the marriage penalty currently incurred by many couples.
- Immediately increase the width of the 10 percent income tax bracket to $14,000 of income for married couples filing jointly and $7,000 for single taxpayers. It would also index the 10 percent tax bracket for inflation beginning immediately.

Families with children would benefit most from this proposal. For example, the Census Bureau tells us the median family of four will earn $66,619 in 2003. This typical family would receive $1,133 in tax relief in 2003 alone—an additional tax cut of 22 percent—under this proposal to accelerate the Bush tax cut.

Because income levels and the number of children per tax return are different in each state, the accompanying table shows the amount of tax relief available to typical families of four earning the median income in each state.

Reduction in Tax Liability if Tax Cut Accelerated

		Taxable Income		Fed. Income Tax Due	
	Adjusted Gross Income	Current Law	If Tax Cut is Accelerated	Current Law	If Tax Cut is Accelerated
United States	$66,619	$46,469	$44,919	$5,170	$4,038
Alabama	$55,082	$34,932	$33,382	$3,440	$2,307
Alaska	$71,593	$51,443	$49,893	$6,396	$4,784
Arizona	$59,591	$39,441	$37,891	$4,116	$2,984
Arkansas	$47,680	$27,530	$25,980	$2,329	$1,197
California	$67,666	$47,516	$45,966	$5,335	$4,195
Colorado	$71,325	$51,175	$49,625	$6,323	$4,744
Connecticut	$88,538	$68,388	$66,838	$10,971	$8,330
Delaware	$74,255	$54,105	$52,555	$7,114	$5,183
Florida	$59,257	$39,107	$37,557	$4,066	$2,934
Georgia	$63,687	$43,537	$41,987	$4,731	$3,598
Hawaii	$70,520	$50,370	$48,820	$6,106	$4,623
Idaho	$57,513	$37,363	$35,813	$3,804	$2,672
Illinois	$72,924	$52,774	$51,224	$6,755	$4,984
Indiana	$66,460	$46,310	$44,760	$5,146	$4,014
Iowa	$62,008	$41,858	$40,308	$4,479	$3,346
Kansas	$60,791	$40,641	$39,091	$4,296	$3,164
Kentucky	$54,866	$34,716	$33,166	$3,407	$2,275
Louisiana	$50,705	$30,555	$29,005	$2,783	$1,651
Maine	$60,151	$40,001	$38,451	$4,200	$3,068
Maryland	$83,035	$62,885	$61,335	$9,485	$6,954
Massachusetts	$83,531	$63,381	$61,831	$9,619	$7,078
Michigan	$73,591	$53,441	$51,891	$6,935	$5,084
Minnesota	$75,532	$55,382	$53,832	$7,459	$5,375
Mississippi	$49,600	$29,450	$27,900	$2,618	$1,485
Missouri	$65,490	$45,340	$43,790	$5,001	$3,868
Montana	$49,398	$29,248	$27,698	$2,587	$1,455
Nebraska	$61,065	$40,915	$39,365	$4,337	$3,205
Nevada	$63,821	$43,671	$42,121	$4,751	$3,618
New Hampshire	$76,718	$56,568	$55,018	$7,779	$5,553
New Jersey	$84,104	$63,954	$62,404	$9,774	$7,221
New Mexico	$50,653	$30,503	$28,953	$2,775	$1,643
New York	$69,073	$48,923	$47,373	$5,715	$4,406
North Carolina	$61,240	$41,090	$39,540	$4,363	$3,231
North Dakota	$56,890	$36,740	$35,190	$3,711	$2,578
Ohio	$66,644	$46,494	$44,944	$5,174	$4,042
Oklahoma	$51,879	$31,729	$30,179	$2,959	$1,827
Oregon	$62,430	$42,280	$40,730	$4,542	$3,410
Pennsylvania	$70,027	$49,877	$48,327	$5,973	$4,549
Rhode Island	$73,246	$53,096	$51,546	$6,842	$5,032
South Carolina	$60,267	$40,117	$38,567	$4,217	$3,085
South Dakota	$59,042	$38,892	$37,342	$4,034	$2,901
Tennessee	$58,773	$38,623	$37,073	$3,993	$2,861
Texas	$57,289	$37,139	$35,589	$3,771	$2,638
Utah	$61,068	$40,918	$39,368	$4,338	$3,205
Vermont	$63,297	$43,147	$41,597	$4,672	$3,540
Virginia	$72,856	$52,706	$51,156	$6,737	$4,973
Washington	$68,054	$47,904	$46,354	$5,440	$4,253
West Virginia	$49,535	$29,385	$27,835	$2,608	$1,475
Wisconsin	$71,434	$51,284	$49,734	$6,353	$4,760
Wyoming	$59,801	$39,651	$38,101	$4,148	$3,015
Dist. of Columbia	$67,880	$47,730	$46,180	$5,393	$4,227

FOR MORE INFORMATION...

America Celebrates Tax Freedom Day®. Tax Foundation economists Scott Moody and David Hoffman explain why the overall tax burden has been trending down the past two years, pushing Tax Freedom Day® back into April, after a long string of later and later Tax Freedom Days. (Tax Foundation, April 2002, 20pp.)

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Technology

GPS Technology Tackles Troublemakers

Jim Stark

Jim Stark, president and chief financial officer of iSECURETrac Corp., is an expert on the application of GPS electronic monitoring and tracking for improving criminal justice and public safety.
http://www.isecuretrac.com

He's been on the run for more than a year. Hiding in caves, mountaintops, and countrysides, Osama bin Laden is America's most wanted man. As U.S. military forces attempt to track and monitor his every move, arguably the most effective weapon in their arsenal is global positioning systems, more commonly known as GPS.

The U.S. military invented GPS during the Cold War to mobilize troops and missiles. Today, these versatile electronic products are also being used here at home for other "enemies of the state": convicted criminals. For years, U.S. correctional authorities have used house arrest devices in the war on crime to keep tabs on people who have committed non-violent crimes.

HOW IT WORKS

Criminals subjected to GPS tracking and monitoring wear a removable personal tracking unit (PTU) and a non-removable wireless ankle cuff the size of a large wristwatch. The cuff communicates with the PTU to ensure it remains in close proximity. If communication with the cuff is lost, the PTU records a violation.

Government agencies in 27 states have begun to use GPS tracking technology.

The PTU acquires its location from the Department of Defense's GPS satellites and communicates that information to an Internet-based database system. Using a Web browser, authorities can access a detailed map to determine where the person has been. If the criminal was in a place he or she was prohibited from being—for instance, if a pedophile violated a court order to stay away from schools—the GPS tracking system would capture that information. The database also allows law enforcement authorities to determine if a GPS-enabled criminal was in the vicinity when a crime is committed.

OPPOSITION

It is not uncommon for a new technology to be met with resistance; GPS tracking and monitoring is no exception.

Some people believe GPS devices violate civil liberties. But no one actually becomes subject to these devices unless they agree to wear them, which suggests criminals themselves believe being tracked and monitored is preferable to incarceration.

Other opponents say GPS monitoring is not punitive enough. That may be true for some criminals ... but on the whole, GPS devices make it possible to imprison more violent criminals for longer periods of time. GPS monitoring also makes it less likely non-violent offenders will become "hardened"—and thus more dangerous upon leaving prison. GPS systems can lower the likelihood that new crimes will be committed, as persons being monitored 24/7 know the odds of being detected through time and location monitoring are very high.

COSTS AND BENEFITS

According to a report issued in 2001 by the American Correctional Association, 22,192 people in the U.S. were under electronic monitoring for either probation or parole in 1999. With more than six million people under the watchful eye of the nation's correctional system, states continue to look for methods other than prison to keep tabs on the least violent offenders.

Several states have used electronic monitoring when tight budgets make imprisonment financially burdensome. Imprisonment costs thousands of dollars per month; GPS tracking costs about one-tenth as much.

For every non-violent offender who can be removed from prison and subjected to GPS tracking, a cell is made available for detaining and controlling a violent offender. Moreover, GPS tracking enables probation and parole officers to keep closer tabs on offenders who may pose a significant danger to their communities.

Sex offenders, INS visa violators, people subject to restraining orders, and early release inmates are prime candidates for GPS tracking. GPS can be employed at all stages of the law enforcement process:

- following arrest but before trial, accused offenders can be fitted with GPS devices rather than detained in jail, released on their own recognizance, or set free on bail;
- convicted offenders placed on probation;
- persons released to a halfway house or given furloughs for employment or other purposes; and
- imprisoned offenders freed on parole after serving some, but not all, of their sentences.

GPS tracking is most beneficial for non-violent offenders whose detention in prison would only worsen their economic and social situation. Sending a full-time parent or someone gainfully employed outside the home to prison would cause a deterioration in the family structure and loss of employment ... not to mention a reduction in taxes paid to the state and an increase in spending by the correctional department. While they broke the law and deserve some form of punishment, such persons are unlikely to benefit from time in prison ... and their communities won't be made much better off either.

FOR MORE INFORMATION...

iTracker Monitoring System. "With iSECURETrac's iTracker monitoring system, offender tracking capabilities now reach beyond the confines of the home, giving authorities the ability to monitor and track an offender while the offender pursues his or her daily activities such as work or travel outside the home." (iSECURETrac Corp., 2002, 12pp.)

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Welfare

Joe Barnett

Guest columnist Joe Barnett is a writer, researcher, and editor for the National Center for Policy Analysis.
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Welfare Reform: Reasons to Stay the Course

Since 1996, the number of Americans receiving cash welfare—called Temporary Assistance to Needy Families (TANF)—has fallen by half, and the number of Americans living in poverty has fallen 21 percent. The 1996 federal welfare reforms are partly responsible for these positive trends. Although some welfare leavers face the same hardships they experienced while receiving assistance, their living conditions have improved, and even women with low-wage jobs are making economic progress.

LESS POVERTY

The U.S. poverty rate is the proportion of families or households with a cash income below the federal poverty threshold, which in 2000 was $13,874 for a single parent with two children. According to the most recent Bureau of Labor Statistics (BLS) data,

- the number of American households in poverty declined from 39 million in 1993 to 31 million in 2000.
- the number of children in poverty declined from 16 million in 1993 to 11.5 million in 2000.

The welfare rolls could be reduced further if more states would adopt effective sanctions—swiftly withdrawing all cash benefits when recipients refuse to work.

Although the reduction in poverty is welcome, the poverty level is not the best indicator of material deprivation in America. It was arbitrarily set at three times estimated food costs for a family in the 1960s, rather than based on actual living expenses. And the Consumer Price Index used to update the poverty threshold overstates increases in the cost of living. Furthermore, in determining whether a family falls below the poverty threshold, only money income is counted. Noncash benefits such as medical care, food stamps, and public housing are ignored.

HIGHER INCOMES

Unlike previous periods of high employment, when welfare caseloads barely budged, from 1996 to early 2001 the TANF caseload fell from 4.6 million families to 2.1 million. The caseload decline was sharpest among young mothers (ages 18-24) and mothers with young children.

Studies of women leaving welfare indicate about two-thirds are working at any point in time, and a total of 80 percent are working or seeking work. This transition from welfare to work contributed to an overall increase in the labor force participation of never-married mothers from slightly less than 50 percent in 1994 to almost 65 percent in 1999.

INCREASED CONSUMPTION

The living conditions of poor families have improved steadily, and by much more than the fall in poverty rates suggests. For the bottom fifth of households, expenditures typically exceed income by more than 100 percent. In the latest BLS survey, for every dollar of reported pretax income in 2000, the poorest fifth of American households reported spending $2.31.

This consumption reflects the lack of substantial material want among most poor people. A Census Bureau study of major consumer durable goods owned or rented in 1992 by the poor in general and welfare recipients in particular found that 92.2 percent of those on welfare had access to color televisions, while 60 percent of the poor and almost as high a percentage of those on welfare had access to VCRs. Over time, the material well-being of those below the poverty level has improved.

An April 2002 Joyce Foundation study found that some who have left welfare continue to face such financial hardships as having a utility cut off or occasionally being late with a rent check. However, the study found that "moving from welfare to work does not necessarily increase such hardships. Michigan researchers found that those who had left welfare and were relying on wages were better off on several of these measures than those who were still on welfare or who had left welfare but had no jobs."

MORE MOBILITY

Although many welfare leavers were employed at low-wage jobs, by working they improved the probability their future incomes will be higher. A 1995 Dallas Federal Reserve Bank study that tracked the income progress of Americans over 17 years found:

- Of those in the bottom fifth of income in 1975, just 5 percent were still in the bottom income bracket in 1991, and only 2.3 percent failed to increase their absolute level of income.
- Sixty percent climbed to the top 40 percent of all earners.

Similarly, a 1992 Treasury Department study showed that between 1979 and 1988, 86 percent of those in the bottom quintile moved to a higher quintile, and 35 percent in the top quintile moved to a lower quintile.

The Census Bureau found that among those whose 1992 family income was below the poverty level, 51 percent saw their income rise the following year, while just 29 percent experienced drops.

FOR MORE INFORMATION...

Gaining Ground: Women, Welfare, and Work. Temporary Assistance to Needy Families (TANF), the federal program created in 1996, accounts for more than half of the decline in welfare participation since 1996 and more than 60 percent of the rise in employment among single mothers. By contrast, the contribution of the booming economy of the late 1990s to these declines was relatively minor, accounting for less than 20 percent of either change. (National Center for Policy Analysis, February 2002, 41pp.)

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A Smoker's New Year's Pledge

by Joseph L. Bast

This year on New Year's Day, I had to decide once again whether to stop smoking. Like millions of other smokers, I opted to continue to smoke but to "cut back" to a level that poses less threat to my health, wealth, and marriage.

This will not satisfy the nannies at the American Lung Association, Campaign for Tobacco-Free Kids, and other taxpayer-funded anti-smoking organizations. Their message is clear: "Quit or die!" They are prepared to use all the weapons of a police state—from punitive taxes to restrictions on free speech to outright bans on smoking in public places—to coerce me into quitting.

Are they right to do this to me? Am I so weak-willed and addled by nicotine addiction that I cannot be allowed to make this decision for myself?

If only 10 percent of the 45 million smokers in the U.S. today switched to smokeless tobacco, the result would be an almost incredible 26.8 million life-years saved.

It's difficult to exaggerate how politically incorrect it is today to defend smokers. Virtually all the country's elites—newspaper editors, elected and unelected government officials, celebrities, doctors, lawyers, and educators—have concluded smoking is bad for adults and worse for kids, and therefore we should all quit. If we don't voluntarily quit, conventional wisdom says we should be compelled to quit. The logic of this position, to its advocates, seems iron-clad.

But things look different from the other end of the cigarette, cigar, pipe, and pouch. Moderate use of tobacco products need not pose a significant health risk, any more than an occasional glass of wine, being slightly overweight, or riding a bicycle. Proper ventilation makes the over-hyped danger of secondhand smoke *de minimus*. So what gives you the right to tell me I can't occasionally smoke or chew?

Surveys show most smokers *over*-estimate the odds that they will die from a smoking-related illness, but choose to smoke anyway. This is, as Nobel Laureate economist Gary Becker has established, a rational choice no different from countless others we make every day. No activity is risk-free. Each of us weighs costs against benefits on scales that exist only in our own minds.

By trying to get smokers to quit, the nannies have made the health risks of smoking worse. Regulators (and their allies, the trial lawyers) forbid tobacco companies from making comparative health claims about their products, or even calling on smokers to moderate their habits. How many lives would be saved if smokers knew the health trade-offs between smoking half-a-pack a day versus two packs? Or switching from cigarettes to a pipe?

We have a pretty good idea, in fact, about how many lives could be saved if people switched from cigarettes to chewing tobacco. Life-long smokers die, on average, six to seven years before nonsmokers, while smokeless tobacco users lose just 15 days, or 0.04 years of life expectancy. If only 10 percent of the 45 million smokers in the U.S. today switched to smokeless tobacco, the result would be an almost incredible 26.8 million life-years saved.

In the name of "protecting" smokers, anti-smoking nannies oppose allowing the makers of chewing tobacco to tell their customers and potential customers that switching could save their lives. It's an incredible blind spot that delegitimizes the entire anti-smoking camp.

At the end of the day, the debate over smoking is less about statistics and health and more about leaving people alone to govern themselves. John Stuart Mill, in a slender book published in 1859 titled *On Liberty*, wrote: "The only purpose for which power can be rightfully exercised over any member of a civilized community against his will is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant."

Mill's statement is directly applicable to the controversy over smoking. Smokers have come under tremendous and unfair attacks in recent years, most often in the name of preventing an injury they cause only to themselves. Quite simply, a just government does not have the authority to ban smoking on private property, or to tell smokers to quit or punish them if they do not.

So this year, I will pledge to reduce, but not quit, smoking. If you are an anti-smoker, I ask you to consider making a New Year's pledge too. Admit you may be over-estimating the health effects of smoking in moderation and underestimating the pleasure tobacco brings to the smoker's life. Pledge to be more tolerant of the smokers in your midst. We, in turn, will do our best not to let our habit annoy you.

Joseph Bast is president of The Heartland Institute, a think tank based in Chicago. He can be reached at **jbast@heartland.org**.

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The Case against Lawyers

The Case Against Lawyers, Catherine Crier
Broadway Books, 2002, 256 pp., $23.95 cloth

by Paul E. Fisher

Catherine Crier is a former lawyer and judge in Texas who went on to television with CNN and other prominent roles as a journalist. She current hosts her own show on Court TV. In her provocative and important new book, *The Case Against Lawyers*, she calls into question some very troubling trends in our society and the role lawyers, judges, bureaucrats, and lobbyists have played in those trends.

As a lawyer myself, I hasten to add that much of the bar is *not* targeted by Crier ... but she certainly makes a strong case against those she believes have done serious harm to the country's legal system.

THE LITIGATION INDUSTRY

Crier identifies the culprits in what she terms a flight from responsibility: the creation of a system of endless rules, mandates, implied duties, and special legislation in our current legal system. She links the out-of-control damage awards granted by our civil system with the political lobbyists who deliver rules tilted in favor of plaintiffs. She forcefully argues this situation has led to the erosion of the principles of a free society, and the picture she paints isn't pretty.

She offers solid examples of our penchant for creating rules to address every imagined social ill. Our desire to have "someone" do "something" creates an environment that encourages manipulation by much of the organized bar. The process starts with the adoption of legislation, then continues with the adoption of regulations. Finally, the process is completed with the pervasive attempt to expand the scope of the statute, whether with further legislative acts or with the help of the courts.

Crier has written a devastating critique of the current legal system and a blueprint containing many key reforms that believers in liberty will applaud.

The culprits are lawyers, social activists, special-interest groups, politicians, and bureaucrats, each with their own motives. The lawyers see the prospect of a big payday for themselves by the use of myriad devices that tilt the playing field their way. Social activists satisfy their objectives and fill their coffers by regulation that creates special classes of every imagined disadvantaged group. The politicians and bureaucrats are primarily motivated by the flow of money that is recycled by the trial bar to support its most reliable allies.

Crier calls this a destruction of our democracy because law and public policy are no longer being made with the purpose of having common ground rules built on a foundation of personal responsibility.

A PATTERN OF ABUSE

Some of the effects of the expansion of rulemaking Crier describes have become so ingrained in our lives we barely realize how deeply they've set into the public interchange. She cites several cases of imposing liability on companies even for products whose risks are well-known to the user, such as the tobacco lawsuits and the case of the woman who sued McDonald's for not warning that hot coffee could scald her if spilled.

Crier also points out the problem of imposing liability for *possible* harm, even though there may never be any *actual* harm. The asbestos industry, for example, has been the subject of thousands of lawsuits filed by people who have been exposed to some asbestos but have no signs of any injury, and in the vast majority of cases never will. The effect, Crier points out, has been the destruction of many companies who played only a small and tangential role in the asbestos industry.

Companies have adapted to this environment by adopting a defensive approach to doing business. Some now place on their products labels that warn us of risks so remote or silly they do us no good—like the label that tells parents to remove the baby from the stroller before folding the stroller. Others have removed products from the production line altogether, because it's cheaper to lose that revenue stream than to pay for lawyers to defend against the claims and for insurance to cover losses.

The tort system, Crier says, has become a grand lottery where no one is responsible for anything, while business is responsible for everything. She points to a decline in the number of public playgrounds and swimming pools caused by the fear of lawsuits, which are filed and too often won regardless of whether the public agency acted in a responsible manner. In the medical industry, doctors increasingly avoid certain specialties, like obstetrics and gynecology, and those that do practice those specialities pay extremely high costs for malpractice insurance.

THE FEEDING FRENZY

The legal system today undermines personal responsibility and at times rewards irresponsible behavior. Crier puts much of the blame squarely on the trial bar, which uses its institutionalized tricks to encourage this evasion of responsibility in order to enrich themselves.

Contingent fees and the lack of a "loser pays" rule in the courts makes litigation virtually risk-free for plaintiffs. The prospect of punitive damages being awarded in amounts grossly disproportionate to the actual damage claimed makes litigation a feeding frenzy when there is any sign of weakness or an opening that has strong emotional appeal. It allows entire industries to be targeted by forum-shopping, i.e., looking for the place with the most sympathetic courts or the most liberal rules for damages.

Crier points to the rules applying to class-action lawsuits as an example of the way the system is rigged to serve the lawyers and not the broad class of citizens and consumers. She asks what social good is served by a case where the nominal client and all members of the class get a coupon for a token discount on a product and the lawyers walk away with a multi-

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million dollar payday, while the targeted product itself either disappears from the shelves or has a litigation tax added to its price.

THE ENTITLEMENT MENTALITY

Another area of concern raised here is the relentless press for equality of result, rather than the freedom of opportunity on which the U.S. was founded. The result, as Crier points out, is the creation of protected classes of every imagined sort. Rather than rights, we end up with an endless list of entitlements that can be enforced against all institutions in society.

As an example, Crier cites the disability bar, which has sprung up to watch for any sign of unequal access in situations with no practical significance or harm. In Tampa, Florida, a wheelchair-bound man sued a strip club because it did not offer lap dances in an area accessible to wheelchairs and allegedly steered the most attractive women away from disabled patrons.

This pursuit of entitlements has undermined freedom of contract and the ability of employers to regulate the workplace to maximize the efficiency of the operation. The fear of lawsuits causes the adoption of rules dealing with sexual harassment, creating speech codes to regulate "bad" speech and having what amount to quotas in hiring, firing, and marketing. The spread of this problem into the universities through speech codes and the creation of special-interest studies is evidence of the pervasiveness of the problem.

Julian Bond, a liberal and civil rights leader, is quoted by Crier as saying, "Today the protected classes extend to a majority of all Americans, including white men over 40, short people, the chemically addicted, the left-handed, the obese, members of all religions. Surely there is a scholar somewhere who can tell us how we came to this state of affairs and how the road to civil rights became so crowded." (page 28)

DESTROYING SCHOOLS

In a particularly important chapter, Crier examines the way education in the U.S. is now being exploited and attacked by the same relentless process of creating entitlements and victims. Fear of having to defend its own professional judgments, for example, has led the education establishment to create a special-education industry that labels students "disabled." Since 1970, the number of children considered in need of special education has tripled. Meanwhile, children who are truly learning-disabled are increasingly mainstreamed, even though they would be served as well or better in a more traditional setting.

An example of the defensiveness that has grown up is the number of children being put on Ritalin and other drugs, in some cases against the wishes of parents. In some cases, parents have been deemed to have committed child abuse for denying this treatment to their children. This entitlement mentality and the fear of the education establishment has also allowed an enormous increase in bilingual education programs, slowing down the advance of large numbers of recent immigrants.

Crier's harshest criticism of the education establishment is levied at teacher unions, who resist any attempt to measure the performance of teachers and are protected by the powerful trial bar with extravagant due process rights before they can be dismissed for lack of competence. She cites in support of her claim the chilling statistic that in 1999, of 72,000 teachers in the New York public school system only 600 received an unfavorable rating in their job reviews ... while nearly half the students are functionally illiterate.

SOME SOLUTIONS

What is the way out of this maze created by lawyers, bureaucrats, lobbyists, and judges? Crier makes many common-sense recommendations, including:

- reinvigorating the common law concept of assumption of risk, and not punishing parties for uses of their products that are not reasonably foreseeable;
- eliminating joint and several liability, which allows a party having only a small role in the negligent action to be pinned for the entire damage;
- allowing federal courts to intervene when class actions are certified by abusive forum-shopping; and
- limiting damages for emotional pain to something reasonably related to the actual damage suffered.

Crier would insist on a system where the loser in a civil lawsuit pays the legal fees incurred by the winner. She would allow judges broader power to sanction lawyers who bring frivolous actions or act in bad faith, demanding amounts clearly in excess of any harm done. She would ban the truly pernicious practice of putting into new legislation the right of parties enforcing new entitlements to recover their legal fees for the suit.

Crier points to the role of money being infused into the political system by those who want to tilt the system in their favor. One reform she suggests to address this is to strengthen the rule against working for an employer in an industry related to one's government service after leaving government service. Crier says at least one Presidential election cycle should separate the periods.

In the end, change will come only if people insist on change, so that we once again become believers in personal responsibility and accept the obligation to assume the risks of living.

Perhaps the strongest point Crier makes on reform is this: "This destructive evolution can be changed, but *not* by rules or laws. Only a change of heart will do." (page 221) In the end, change will come only if people insist on change, so that we once again become believers in personal responsibility and accept the obligation to assume the risks of living.

The call for reform in this book is sometimes lost in attention to matters not directly related to the problems Crier points out. There is a sentimental discussion of the problems with the system of capital punishment. A chapter is devoted to the excessive money and attention spent in the hopeless drug war. The discussion of campaign contributions doesn't make a sufficient distinction between those who want to buy special legislation for private benefit and those who have a principled and fervent cause. But these limitations don't detract significantly from the book's central arguments and Crier's prescription for reform.

Crier has written a devastating critique of the current legal system and a blueprint containing many key reforms that believers in liberty will applaud. She offers an optimistic view of the possible ways toward these reforms. She also asks whether the public has the will to put the brakes on the excesses of the system, especially when faced with the powerful forces that have an incentive to thwart real reform. Only time will tell, but this book is a major contribution in the intellectual battle to end lawsuit abuse.

Paul E. Fisher is head of real estate for the Chicago-based law firm McGuireWoods and a member of the Board of Directors of The Heartland Institute.

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What Economists Can Teach Environmentalists

by Lawrence S. Pratt

Economists have a great deal to tell environmentalists, who often display a breathtaking ignorance of the functioning of markets. Almost none of their dire predictions circulating in the early 1970s has come to pass. Nearly every basic commodity and raw material is more plentiful, and cheaper in real (constant purchasing power) terms than it was 30 years ago. Population growth has been less than even the lowest projections of demographers. Humans are living longer and consuming more nutritionally adequate diets, the opposite of the predictions.

In particular, we have not run out of oil, as many environmentalists predicted then and continue to predict today. Such dire forecasts are typically based on seemingly incontestable data on reported reserves and consumption levels, but they have not and will not come to pass.

IMPORTANCE OF PRICES

Economists understand that an allocation of resources determined by large numbers of producers and consumers responding to changing prices is to be preferred over an allocation determined by a relatively small number of bureaucrats or other "experts" and imposed by fiat. Economists have a satisfactory answer to a question that had puzzled thinkers since antiquity: Why is there little apparent relationship between the usefulness of a good, its price, and its cost of production?

Many human beings cannot afford a gemstone—say, a ruby—but no one can live without water. Yet a ruby, even of the poorest quality, is worth far more than a gallon of water. Scarcity could be one explanation—it may be that rubies are expensive because they are rare. But something that is relatively expensive is not always relative scarce. For example, the high price of a 1951 Mickey Mantle baseball card is not just a function of its scarcity—there are probably far fewer 1951 cards of many less well-known players still around.

What economists understand is that *prices reflect what people are willing to pay and receive*. Prices are, above all, information. They provide a highly efficient means of allocating resources.

For example, if the price of a commodity increases, there may be only two persons in the world who claim to understand why ... and they may disagree with each other! But all who use that commodity will have an incentive—higher prices—to use less, and all who produce it will be encouraged to produce more. This occurs almost instantaneously, with no committee meetings, drafting of five-year plans and regulations, etc.

What economists understand is that prices reflect what people are willing to pay and receive. Prices are, above all, information.

When prices are determined by fiat, there will be either a shortage, if prices are too low, or a glut, if prices are too high. Either situation imposes a net loss to an economy compared to what would prevail if markets were allowed to operate freely.

Non-economists do not generally understand this. Most certainly this was the reason for the astonishingly wrong-headed policies pursued during the oil crises of the 1970s. Continued price controls on domestic production and its allocation among refiners amounted to a subsidy for oil imports. Not surprisingly, foreign oil was the fastest-growing U.S. energy source during the 1970s—the exact opposite of our national goals as enunciated by three Presidents.

SUSTAINABILITY CANNOT BE PLANNED

The latest manifestation of this is the notion of "sustainable development." Although it means many things to many people, an oft-cited definition is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."

This may sound sensible to the average citizen, but to an economist it looks like a solution in search of a problem. The solution seems to be central planning: Someone will have to decide what is sustainable and what is not, what the "needs" of the present are, and what those of future generations will be. Whoever decides these questions will then have to be empowered to prevent ordinary people from engaging in activities deemed to be "unsustainable."

There have been many instances of abandoned mines, leveled forests, depleted soils, fished-out fisheries, etc. However, the exhaustion of resources has never been the cause of economic stagnation and decline of economies. As Herbert Stein famously remarked, "a trend that is unsustainable will not be sustained."

The tremendous advantage of economic freedom is the almost immediate feedback, in the form of losses, to economic decision-makers who misuse resources. By contrast, central planners tend to pursue wrong-headed initiatives until they are booted out.

The only way economic development can be sustained is to preserve freedom of individual thought and action. Those who are saying they are concerned with "sustainable development" would seem to be headed in the wrong direction.

Lawrence S. Pratt is senior fellow, American Institute for Economic Research. For the full text of this article contact the Institute at Box 1000, Great Barrington MA 01230 or via email to **info@aier.org.**

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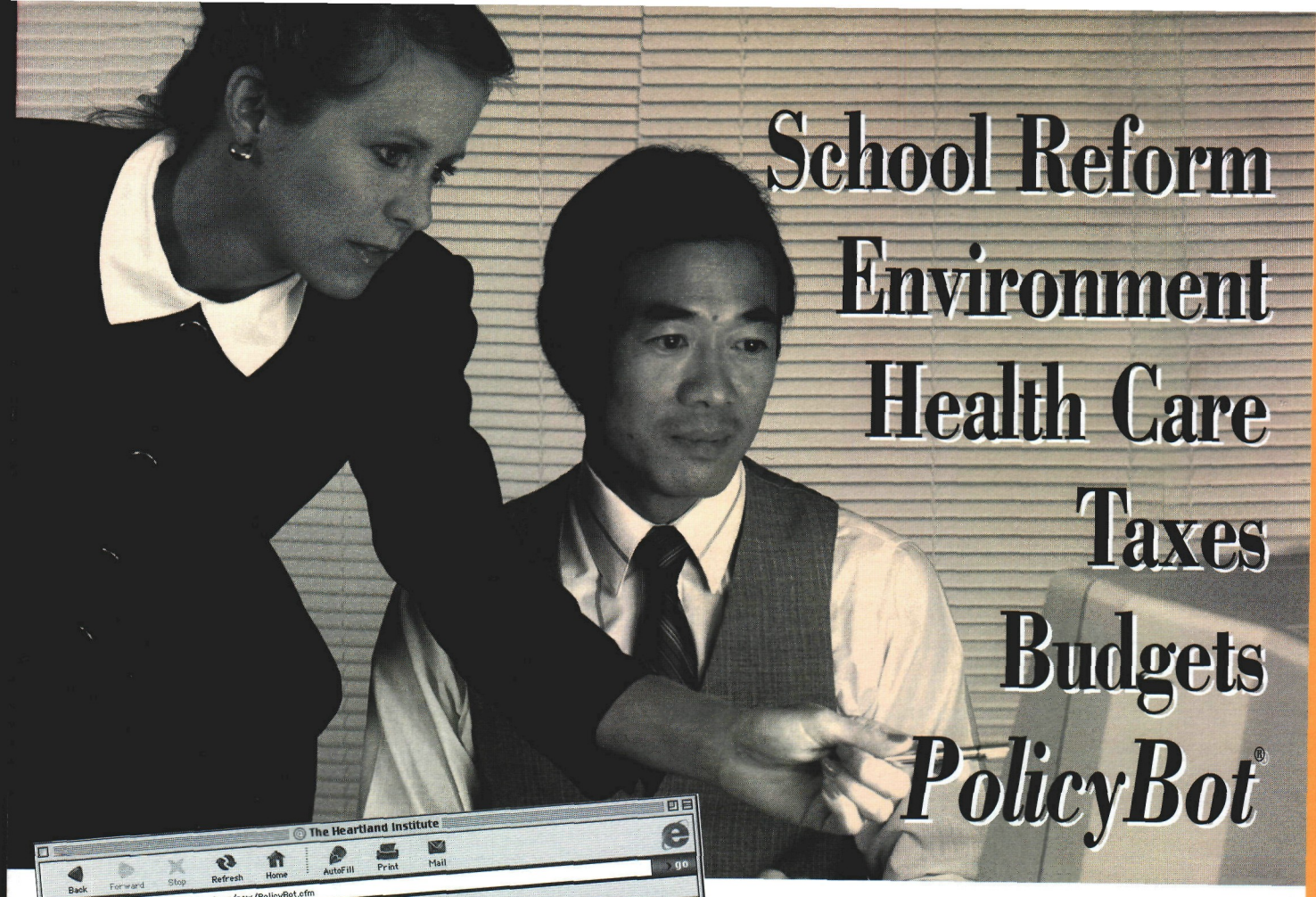

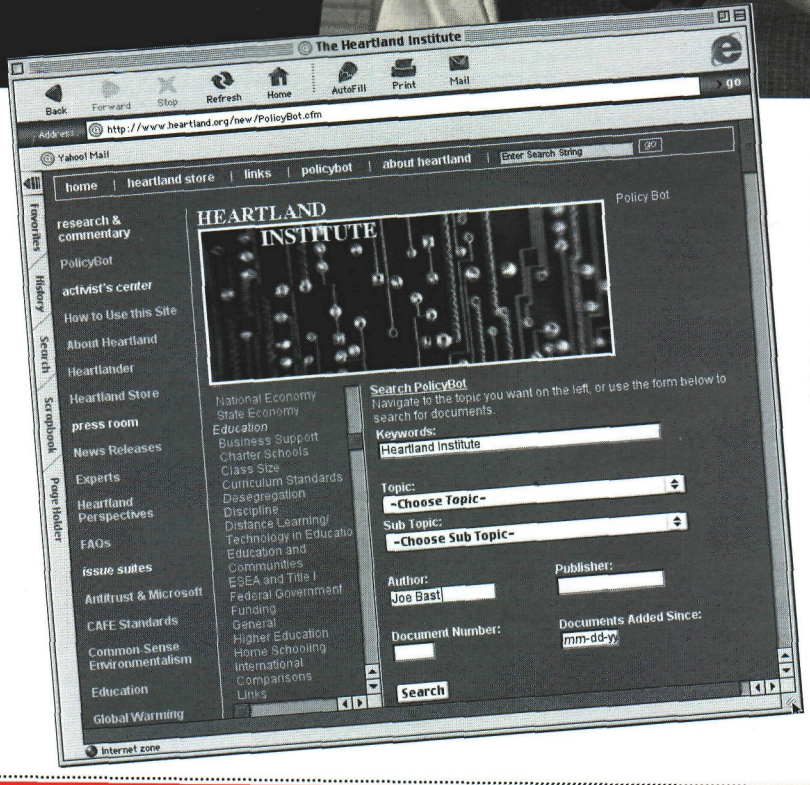

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